

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Improving Public Safety Communications)	WT Docket No. 02-55
in the 800 MHz Band)	

**STATEMENT OF THE DISTRICT OF COLUMBIA
IN SUPPORT OF
PETITION OF THE COUNTY OF FAIRFAX, VIRGINIA,
FOR WAIVER OF THE PROGRAM COMPLETION DATE

WAIVER – EXPEDITED ACTION REQUESTED**

**Linda Singer
Attorney General
for The District of Columbia
441 4th Street, N.W., Room 6N64
Washington, D.C. 20001**

**Stephen B. Lyons
Acting Deputy Attorney General
Commercial Division**

**James J. Stanford
Chief, Procurement Section**

**Jon N. Kulish
Assistant Attorney General**

DISTRICT OF COLUMBIA'S STATEMENT AND SUMMARY

The District of Columbia submits this Statement in support of the Petition of the County of Fairfax, Virginia, for Waiver of the Commission's June 26, 2008, Program Completion Date for Rebanding the County's 800 MHz Channels ("Fairfax County Petition"). The District of Columbia ("District") also supports and joins in the suggestion in the Fairfax County Petition that the Federal Communications Commission ("Commission"), on the Commission's own motion, grant commensurate waivers of the Program Completion Date to the District and all of the other National Capital Region licensees. Fairfax County filed its Petition in the instant Federal Communications Commission ("FCC") docket on May 24, 2007.

The District and Fairfax County believe, and Fairfax County has demonstrated in its Petition, that the Commission should establish July 29, 2010 as the Completion Date for Fairfax County and also for all of the National Capital Region ("NCR") licensees because, as a practical matter, the NCR jurisdictions are inseparable if the existing and necessary interoperability of NCR-jurisdiction public safety radio systems is to be maintained. Thus, as established in the Fairfax County Petition, the NCR jurisdictions, including Fairfax County, must proceed upon a common schedule for implementation of the rebanding.

BACKGROUND

The District of Columbia is authorized by the Commission, under Part 90 of the Commission's Rules, to operate an 800 MHz public safety voice radio network under call

signs KNJA391, WPYD604, WPXT459, KNJU834, and KNJE616. The District's system is a ten-site, sixteen-channel trunked radio system that currently uses seven frequencies in the Lower 120 channels of the 800 MHz band, where frequencies from the newly-allocated National Public Safety Planning Advisory Committee ("NPSPAC") portion of the 800 MHz band are required to be relocated.¹

The District must reband its systems within the Lower 120 channels pursuant to the Commission's Orders in this proceeding. By special deferral granted by the TA, the District is on the same 800 MHz public safety radio rebanding schedule as the other NCR jurisdictions. Under the TA's Regional Prioritization Plan, the District is assigned to Wave 1, Stage 1. Because of the need to maintain interoperability among the NCR agencies, the District requested that the TA permit the District to reconfigure its systems at the same time as the other NCR-member agencies, regardless of whether they are in Stage 1 or Stage 2 of Wave 1.

In its March 9, 2007 letter to the Chief Mediator, the TA recognized that "maintaining interoperability among NCR-member agencies must be a priority during reconfiguration" and, to facilitate such coordination, the TA deferred the District's reconfiguration until Wave 1, Stage 2 so that the District "follows the same schedule as the majority of licensees in the NCR." TA Letter, March 9, 2007, Exhibit 1 to District's Statement.²

¹ The District does not operate NPSPAC frequencies at the system level. However, the District's public safety subscribers operate on NPSPAC frequencies for interoperability with other NCR jurisdictions.

² In this letter to the Chief Mediator, the TA recognized that, under the proposed reconfiguration schedule described in the District's letter, the District would complete its reconfiguration after June 26, 2008, and also advised that, if the District and other NCR-member agencies believe that additional time beyond June 26, 2008 is needed to complete reconfiguration, then an extension of, or relief from, the program completion date must be approved by the FCC. Exhibit 1 to District's Statement.

As described and fully supported in the Fairfax County Petition, the District of Columbia is one of the fourteen 800 MHz licensees in the Washington, D.C. metropolitan area that currently are interoperable with each other.³ Over the past 20 years, the fourteen National Capital Region licensees have built one of the most advanced interoperable public safety voice radio environments in the United States.⁴ This NCR interoperability will be disrupted unless the Commission allows the NCR jurisdictions to plan the rebanding of their systems jointly and carefully and to execute their rebandings in a coordinated manner. The District of Columbia has worked alongside Fairfax County and the other NCR jurisdictions for almost two years to determine how to reband as required by the Commission's order in this proceeding while maintaining the interoperable communications that play a critical role in the day-to-day responsibilities of the District and the other NCR jurisdictions to protect the public and to respond to major incidents, disasters, terrorist attacks, and other large-scale emergency response situations.

³ These jurisdictions include Fairfax County, Virginia; Arlington County, Virginia; City of Alexandria, Virginia; Prince William County, Virginia; City of Manassas, Virginia; Fauquier County, Virginia; Loudoun County, Virginia; the District of Columbia; Montgomery County, Maryland; Frederick County, Maryland; Charles County, Maryland; Prince George's County, Maryland; as well as the Metropolitan Washington Airports Authority, and the University of Maryland. They also include a number of independent jurisdictions that are not licensees themselves, but are subscribers on the trunked radio systems of the licensees listed above. In the District, this includes more than ten additional jurisdictions, including the District's Protective Services Division and Departments of Transportation, Health and Corrections, and the University of the District of Columbia Police.

⁴ The District uses the term "NCR" in the same sense that Fairfax County uses the term in the Fairfax County Petition, namely to describe the fourteen jurisdictions in the Washington, D.C. metropolitan area that currently operate interoperable public safety radio systems. See Fairfax County Petition, page ("Petition") 2 n. 5.

The District currently is in the final stages of negotiating with Sprint Nextel (“Nextel”) a Frequency Reconfiguration Agreement (“FRA”).⁵ The current draft of the FRA between the District and Nextel contains a “retuning cooperation” provision, to which the District and Nextel have agreed. The retuning cooperation provision, which is substantially the same as the retuning cooperation provision in Fairfax County’s approved FRA, provides for the District to synchronize the retune of the District’s 800 MHz system with the retune of the systems of other NCR jurisdictions in order that the NCR jurisdictions may maintain the interoperability of their systems *inter se*.

The NCR synchronization will be arranged through a regional coordinator, who is providing the NCR jurisdictions and the TA a Preliminary Master Schedule and then a Master Schedule. By the “retuning cooperation” provision in its FRA, the District will agree that if the completion date in the NCR Master Schedule, and hence the reconfiguration of the District’s system, extends beyond the FCC’s current program completion date of June 26, 2008, the District will require a waiver from the FCC of the Commission’s current completion date for the 800 MHz rebanding program.

STATEMENT IN SUPPORT OF FAIRFAX COUNTY PETITION

By the Fairfax County Petition, Fairfax County seeks a waiver of the June 26, 2008, deadline for completion of reconfiguration by licensees that must reband pursuant to 47 C.F.R. § 90.677 and the Commission’s Orders in this proceeding. Fairfax County asked the Commission to establish July 29, 2010 as the completion date for reconfiguration of the channels that the County is licensed to operate in the 1-120 channel range and

⁵ The District expects to execute the FRA after the Commission resolves the issues presented in Mediation No. TAM-11199 (see Exhibit 2 to District’s Statement) and after the District is assigned its final new frequencies for incorporation in the FRA.

the NPSPAC portion of the 800 MHz band.⁶ Fairfax County petitioned only on its own behalf, however, in addition, citing 47 C.F.R. § 1.925(a), observed that the Commission can act on its own motion to grant a waiver on behalf of all NCR jurisdictions.⁷ On that basis Fairfax County urged the Commission to grant its Petition and thereby establish July 29, 2010 as the Completion Date for all NCR licensees.⁸

The District supports the Fairfax County Petition. Moreover, the District agrees with Fairfax County's suggestion that the Commission should grant all NCR jurisdictions until July 29, 2010, to complete their retuning activities. The Preliminary Master Schedule for the NCR, the basis for the extended rebanding completion date ("waiver date") sought in the Fairfax County Petition, is based upon the coordinated rebanding activities of all fourteen of the NCR jurisdictions, including the District.

As the Fairfax County Petition explained, the Preliminary Master Schedule is high-level in nature and has not yet been expanded to include all of the detailed tasks required to safely and effectively reband the 800 MHz public safety radio systems in and around the NCR. However, this preliminary schedule is the only schedule that currently describes the scope and expected duration of the coordinated rebanding of interoperable 800 MHz public safety voice radio networks in the NCR.

⁶ As Fairfax County made clear, July 29, 2010, is the date by which Fairfax County currently expects it can vacate its 800 MHz 1-120 band channels. Fairfax County cannot reband its 800 MHz channels in the NPSPAC band until the 1-120 band channels are vacated. However, the County cannot accurately determine now the dates by which it can vacate its 800 MHz 1-120 band channels. Therefore, the County stated that it will have to request a waiver again once the County has more definitive information. The District likewise will do so.

⁷ Fairfax County Petition 13-14, 16-17.

⁸ Id.

The final, more-detailed Master Schedule is not yet available and will be generated only after execution of a Regional Planning and Coordination Agreement between the regional coordinator and Nextel and then the execution and performance of an implementation contract between the regional coordinator and Motorola, Inc. As a result, the Preliminary Master Schedule is subject to change depending on how much time is consumed by the regional negotiations and TA approval process; the finalization and execution process for these contracts; and the time necessary for Motorola to obtain scheduling information from the other NCR licensees, or other factors completely outside the control of Fairfax County or of the District.⁹

The District's system operates half of its channels in the Lower 120 portion of the 800 MHz band, and therefore the FCC's extension of the Completion date to July 29, 2010, may not provide sufficient time to enable the District to complete its rebanding in coordination with the NCR jurisdictions.¹⁰ However, the FCC's extension of the Completion Date for Fairfax County and for all NCR jurisdictions to July 29, 2010, will allow the NCR jurisdictions to continue the necessary regional coordination. Moreover, it will allow time for the development of the Master Schedule that will more accurately set out the rebanding schedule for the entire NCR and establish the basis for a final realistic schedule for completion of rebanding by the NCR jurisdictions while maintain-

⁹ The Preliminary Master Schedule is based on the assumption that the contract between the regional coordinator and Motorola would be executed more than two months ago, on April 16, 2007. That contract has not yet been executed. Therefore, the dates set out in the Preliminary Master Schedule already are at risk.

¹⁰ If the District were to proceed to reband its own radio systems without the NCR coordination, the District could complete the rebanding well before the current June 26, 2008 deadline. However, the District would not consider proceeding with rebanding in a manner that endangered the maintenance of the current interoperability of the District's public safety radio systems with the systems of the other NCR jurisdictions.

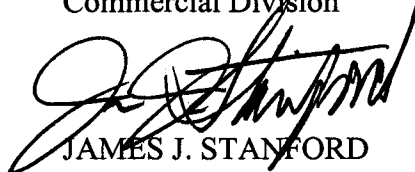
ing the necessary interoperability features of the 800 MHz public safety radio systems of all NCR jurisdictions.

For the reasons stated in the Fairfax County Petition, and upon the facts established in that Petition, the District urges the Commission to grant the waiver requested therein and establish July 29, 2010 as the Completion Date for all fourteen NCR licensees.

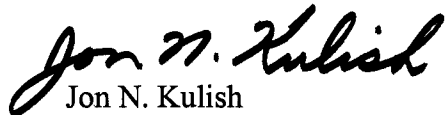
Respectfully submitted,

LINDA SINGER
Attorney General
for the District of Columbia

STEPHEN B. LYONS
Acting Deputy Attorney General
Commercial Division



JAMES J. STANFORD
Chief, Procurement Section



Jon N. Kulish
Assistant Attorney General
D.C. Bar No. 378722
441 4th Street, N.W., Room 6N64
Washington, D.C. 20001
(202) 442-9756
(202) 727-6014(fax)
jon.kulish@dc.gov

Dated: June 22, 2007

CERTIFICATE OF SERVICE

The foregoing Statement and request in Support of the Petition of the County of Fairfax, Virginia for Waiver of the Program Completion Date has been served electronically the 22nd day of June, 2007 upon:

David Furth, Associate Bureau Chief, Public Safety and
Homeland Security Bureau, Federal Communications Commission, at
David.Furth@fcc.gov

Christopher M. McMurray, TA Mediator, at
feudnomore@msn.com

Merrell B. Renaud, TA Mediator, at
mrenaud@ssd.com

Justin O. Kay, Counsel for Sprint-Nextel, at
Justin.Kay@dbr.com

Erin C. Ward, Assistant County Attorney,
Fairfax County, Virginia, at
Erin.Ward@FairfaxCounty.gov.



Jon N. Kulish
Assistant Attorney General

EXHIBIT 1

to

Statement of the District of Columbia
in support of Petition of the County of Fairfax, Virginia,
for Waiver of the Program Completion Date



Transition
Administrator

The Official Reconfiguration Manager

March 9, 2007

Joseph P. Markoski, Esq.
Chief Mediator
800 MHz Transition Administrator, LLC
c/o Squire, Sanders & Dempsey L.L.P.
1201 Pennsylvania Avenue, N.W.
P.O. Box 407
Washington, DC 20044

Re: District of Columbia's 800 MHz Reconfiguration

Dear Mr. Markoski:

On behalf of the 800 MHz Transition Administrator, LLC ("TA"), I am responding to the January 11, 2007 letter from the District of Columbia ("District") requesting certain relief regarding the reconfiguration of its 800 MHz system. Because the District is in mediation, the TA's reply is directed to your attention.

As explained below, the TA agrees with the District that coordinated implementation among member agencies in the National Capitol Region ("NCR") is appropriate. However, the TA is unable to address the District's request for an additional three months to complete the negotiation of a Frequency Relocation Agreement ("FRA") with Sprint Nextel. Management of the mediation process, including the time needed to negotiate an FRA with Sprint Nextel, rests solely with the mediator.

According to the TA's Regional Prioritization Plan ("RPP"), the District is assigned to Wave 1, Stage 1, which is an earlier reconfiguration schedule than most agencies in the NCR, which are assigned to Wave 1, Stage 2. Because of the need to maintain interoperability among NCR agencies, the District requests that it be permitted to reconfigure its systems at the same time as the other NCR-member agencies, regardless of whether they are in Stage 1 or Stage 2 of Wave 1. The TA recognizes that maintaining interoperability among NCR-member agencies must be a priority during reconfiguration. To facilitate such coordination, the TA will defer the District of Columbia's reconfiguration until Wave 1, Stage 2 so that its reconfiguration follows the same schedule as the majority of licensees in the NCR. Under the TA's RPP, licensees assigned to Wave 1, Stage 2 are to complete reconfiguration of their systems by December 31, 2007. This action should also reduce the time and cost for reconfiguring the District of Columbia's system. The District is also requested to coordinate its reconfiguration with non-affiliated NPSPAC licensees so that they do not experience interference.



Transition
Administrator

The Official Reconfiguration Manager

Please be advised, however, that the proposed reconfiguration scheduled described in the District's letter would result in the completion of reconfiguration after June 26, 2008, the date established by the FCC by which all licensees are to have completed reconfiguration.¹ If the District and other NCR-member agencies believe that additional time beyond June 26, 2008 is needed to complete reconfiguration, then an extension of, or relief from, the program completion date must be approved by the FCC.² The TA is unable to modify the FCC-established thirty-six month schedule for reconfiguration.

The TA will continue working with the District and other NCR-member agencies to assist in the reconfiguration of their systems in a manner that best meets their needs and on a schedule that is consistent with the timelines established by the FCC.

If you have any additional questions, please contact the TA at 888.800.8220 or comments@800TA.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Brett S. Haan", written over a light gray rectangular background.

Brett Haan
800 MHz Transition Administrator, LLC

¹*Improving Public Safety Communications in the 800 MHz Band*, Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order, 19 FCC Rcd 14969, ¶ 201 (2004) ("800 MHz Report and Order").

² *Id.*

EXHIBIT 2

to

Statement of the District of Columbia
in support of Petition of the County of Fairfax, Virginia,
for Waiver of the Program Completion Date

**800 MHz TRANSITION ADMINISTRATOR, LLC
ALTERNATIVE DISPUTE RESOLUTION**

In the Matter of)	
)	
District of Columbia)	
)	
and)	Mediation No. TAM-11199
)	TA Mediator Christopher M. McMurray
Nextel Communications, Inc.)	

To: Public Safety and Homeland Security Bureau, Federal Communications Commission

**TRANSMITTAL OF RECORD
AND
REQUEST FOR CONFIDENTIAL TREATMENT**

The 800 MHz Transition Administrator, LLC ("TA") hereby transmits to the Public Safety and Homeland Security Bureau the Record in the above-captioned matter. As provided in the TA's ADR Plan,¹ the Record consists of the TA's Recommended Resolution and the attached Appendix.

The Commission has stated that "if a document in the record has already been granted confidential treatment in the mediation, the TA will so designate and it will be presumed that the party who obtained confidential treatment in mediation also seeks confidential treatment from the Commission."² Pursuant to the TA's Confidentiality Policy, a copy of which has previously been made available to the parties and filed in the record of the 800 MHz reconfiguration proceedings, the TA has designated "the Record of a TA mediation, as defined in the TA's Alternative Dispute Resolution ("ADR") Plan . . . as Protected Confidential Information in all cases."³

The Commission has further stated that, at the time the Record is forwarded to the Commission, the TA may request confidential treatment. Any document for which the TA

¹ See *Alternative Dispute Resolution Plan for 800 MHz Transition Administrator, LLC*, v1.4, § 8.D.10 (2007).

² Public Notice, "Wireless Telecommunications Bureau Announces Procedures for *De Novo* Review in the 800 MHz Public Safety Proceeding," WT Docket No. 02-55, DA 06-224, at 2 (Jan. 31, 2006) ("*January 31 Public Notice*").

³ *Confidentiality Policy for 800 MHz Transition Administrator, LLC*, v1.0, § V.2 (2005).

requests confidential treatment "will not be available for public inspection unless and until it is requested pursuant to the Freedom of Information Act (FOIA) and the Commission has determined that the request does not fall within any FOIA exceptions."⁴ Pending before the Commission is the TA's previously filed request that "the Commission withhold from public inspection all information in the record of any TA mediation."⁵

Consistent with the TA's Confidentiality Policy, its pending request for confidential treatment, the Commission's Public Notice quoted above, and the parties' expectations, the TA requests that the Record be withheld from public inspection.

A copy of the Recommended Resolution has been forwarded, via electronic mail, to:


Counsel for Nextel Communications, Inc.:

Justin Kay
Drinker Biddle & Reath LLP
1500 K Street, NW, Suite 1100
Washington, DC 20005-1209
202.842.8800
Justin.Kay@dbr.com

Counsel for District of Columbia:

Jon N. Kulish
Assistant Attorney General
441 4th Street, NW, Room 6N64
Washington, DC 20001
202.442.9756
jon.kulish@dc.gov

Respectfully submitted,


Joseph P. Markoski
Chief Mediator
jmarkoski@ssd.com
202.626.6634

DATE: April 23, 2007

⁴ January 31 Public Notice at 2.

⁵ Request That Certain Information Submitted to the Commission by the 800 MHz Transition Administrator, LLC Be Withheld From Public Inspection, WT Docket No. 02-55, at 9 (Dec. 23, 2005).